HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No.524 of 2001
(Old No. 1247 of 1997)

Brijendra Kumar Saxena
Proprietor
M/s Malti Industries
K-82 World Bank colony
Barra, Kanpur ……..Applicant

Versus

1. Vigyan Chemical Industries
   90 Raja Road, Dehradun
   Through its power of attorney
   Sri Sunil Kumar Gupta S/o Vigyan Prakash
   90 Raja Road, Dehradun
2. State of Uttaranchal ……..Respondents

Sri Arvind Vashist learned counsel for the applicant.
Sri Lalit Verma learned A.G.A. for the State.

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the complaint dated 1.8.1996 and proceedings in compliant case No.828/1996 Vigyan Chemicals Industries Vs. Brijendra Kumar Saxena pending before the Additional Chief Judicial Magistrate IVth, Dehradun under section 138 Negotiable Instrument Act.

2. Brief facts of the case are that on 1.8.1996 the respondent No.1 filed a complaint before the Magistrate against the applicant under section 138 N.I. Act alleging therein a cheque was issued by the applicant towards the payment of respondent No.2. When the respondent No.2-complainant submitted the cheque before the bank, the cheque was dishonoured by the bank due to insufficiency of funds. Thereafter, a letter was sent by registered post to the applicant on 19.06.1996 that the

cheque had been dishonoured and requiring the accused to make the payment by the bank draft. A letter was again sent to the applicant and the said letter was received by the applicant personally. Inspite of personal service, the applicant failed to make payment without 15 days. On the said complaint, the learned Magistrate took cognizance against the applicant by the impugned order. Feeling aggrieved by this, the applicant preferred the present petition.

3. Learned counsel for the applicant contended that the notice as required under section 138 of the Negotiable Instrument Act has not been given to the applicant and as such the proceedings are liable to be quashed. Learned A.G.A. refuted the contention. It has been held in **Krishna Exports Vs. Raju Das 2004 (13) SCC p/498** in which the complainant has sent a letter to the accused requesting immediate payment of the amount of cheque to be arranged failing which he threatened to take legal action in the matter. In that case, the Hon'ble Supreme Court has held that the letter sent by the complainant has been certainly qualified itself as a notice within the contemplation of clause (c) of the N. I. Act. In view of the aforesaid decision, the letter sent by the complainant is sufficient to prove that the notice as required under section 138 N.I. Act has been given.

4. Learned counsel for the applicant contended that the said notice has not been placed on record and it is obligatory on the part of the complainant to file the notice before the court. It is a well settled position of law that the said letter, which has qualified itself as a notice, is the subject matter of evidence. The copy of

the notice has been filed in this court. The evidence of the complainant reveals that the letter was sent to the applicants. Therefore, the complainant may file the said notice before the court below at the time of recording of evidence. The question *"whether the said letter/notice was given to the applicant or the said letter was proper or not"* can be decided by the trial court after recording the evidence. In view of the above, I do not find any merit in the petition. Therefore, the petition is dismissed accordingly.

(J.C.S.RAWAT, J.)

Dated 28.03.2006

LSR